



Federal Communications Commission
Washington, D.C. 20554

January 29, 2015

DA 15-126

Via Certified Mail, Return Receipt Requested

Louis F. Mercatanti
President
Nassau Broadcasting Holdings, Inc.
619 Alexander Road
Third Floor
Princeton, NJ 08540

**Re: Notice of Interim Default Payment Obligation for Auction 37 Construction Permits
FM216-A (Jefferson, NH) and FM325-A (Hardwick, VT)**

DO NOT DISCARD THIS IMPORTANT NOTICE
OF A DEMAND FOR PAYMENT
OF A DEBT OWED THE UNITED STATES AND ORDER OF PAYMENT

Dear Mr. Mercatanti:

This Order provides notice and demands payment of the interim default payment obligation for Nassau Broadcasting Holdings, Inc. ("Nassau") with respect to its default arising out of Auction 37. As described fully below, Nassau had the winning bid in Auction 37 for FM broadcast construction permits FM216-A (Jefferson, NH) and FM325-A (Hardwick, VT) (hereinafter, "the Permits").¹ After the close of Auction 37, Nassau failed to prosecute its long-form applications (FCC Form 301) and its applications were dismissed.² Specifically, Nassau failed to respond to requests for environmental compliance information required by the Commission's rules and necessary to process its long-form applications.³ Thus, pursuant to section 73.3568(a) of the Commission's rules, Nassau's long-form applications were dismissed for failure to prosecute and Nassau became subject to the default provisions of section 1.2104(g)

¹ See FM Broadcast Construction Permits Auction Closes; Auction No. 37 Winning Bidders Announced; Payment and Application Deadlines Established, *Public Notice*, 20 FCC Rcd 1021 (2004) ("*Auction 37 Closing Public Notice*").

² See Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau, to Nassau Broadcasting Holdings Inc., Ref. 1800B3 RG (July 14, 2011) (referencing Facility ID No. 164220 and dismissing application BNPH-20050103AIJ for permit FM325-A (Hardwick, VT)) ("*Hardwick Jul. 2011 Letter*"); Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau, to Nassau Broadcasting Holdings Inc., Ref. 1800B3 RG (July 14, 2011) (referencing Facility ID No. 164219 and dismissing application BNPH-20050103AIE for permit FM216-A (Jefferson, NH)) ("*Jefferson Jul. 2011 Letter*").

³ See *id.*

of the Commission's rules.⁴

On December 1, 2004, the Media Bureau and the Wireless Telecommunications Bureau ("Bureaus") announced the winning bidders in Auction 37, including Nassau.⁵ The Bureaus also announced that by no later than December 15, 2004, all Auction 37 winning bidders were required to have on deposit enough funds to bring each winning bidder's deposit to twenty percent (20%) of its winning bids.⁶ If a winning bidder's upfront payment was not sufficient to meet the down payment requirement, the winning bidder was required to deposit sufficient funds to meet its down payment.⁷ The Bureaus further instructed that by January 3, 2005, all winning bidders were required to submit their long-form applications.⁸ The rules applicable to winning bidders in Auction 37 required Nassau to submit its final payment ten business days after the release of a public notice announcing that the Commission had completed processing Nassau's application and was prepared to issue the permit (a "prepared-to-grant public notice").⁹

Nassau's net winning bid was \$1,641,000.00.¹⁰ The Commission applied the \$230,340.00 that Nassau had on deposit toward its down payment requirement and notified Nassau that the additional amount due to meet its down payment obligation was \$97,860.00.¹¹ Nassau timely submitted the down payment by December 15, 2004, and filed long-form applications for the Permits by January 3, 2005.¹²

Despite numerous requests by Commission staff throughout the six years after the close of Auction 37, Nassau failed to provide the Media Bureau with the required certification that the proposed sites for the Permits satisfied the requirements of the National Environmental Policy Act or were located at sites that did not require environmental analysis.¹³ By separate letters dated May 6, 2011, the Audio Division of the Media Bureau ("Division") gave Nassau a final opportunity to submit the missing information and informed Nassau that if it did not correct the defects in both applications within 30 days, the applications

⁴ See 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c), 73.3568(a); Auction of FM Broadcast Construction Permits Scheduled for November 3, 2004, *Public Notice*, 19 FCC Rcd 10570, 10605-06 (2004) ("*Auction 37 Procedures Public Notice*").

⁵ See *Auction 37 Closing Public Notice*, 20 FCC Rcd 1021, Attach. A.

⁶ See *id.* at 1021-22; see also 47 C.F.R. § 1.2107(b).

⁷ See *Auction 37 Closing Public Notice*, 20 FCC Rcd at 1021-22.

⁸ See *id.* at 1025-26; see also 47 C.F.R. §§ 73.5005(a), 1.2107(c) (2004).

⁹ See *Auction 37 Closing Public Notice*, 20 FCC Rcd at 1022.

¹⁰ See *id.* at 1021, Attach. B. Nassau's net winning bid is calculated as the sum of \$879,000.00 for permit FM216-A (Jefferson, NH) and \$762,000.00 for permit FM325-A (Hardwick, VT).

¹¹ Nassau submitted an upfront payment of \$255,000.00. *Auction 37 Closing Public Notice*, 20 FCC Rcd 1021, Attach. A. After the close of Auction 37, the Commission applied a withdrawal payment of \$24,660.00 from Nassau's upfront payment. See *id.* at 1021, Attach. B. Thus, the Commission applied \$230,340.00 toward Nassau's down payment requirement. *Id.*

¹² See Application for Construction Permit for Commercial Broadcast Station (FCC 301), BNPH-20050103AII (permit FM325-A (Hardwick, VT)), BNPH-20050103AIE (permit FM216-A (Jefferson, NH)) (publicly available through the Media Bureau's Consolidated Database System, <http://www.fcc.gov/encyclopedia/media-bureau-filing-systems-and-databases>) (both filed on January 3, 2005). Nassau submitted engineering amendments to application BNPH-20050103AIE (permit FM216-A (Jefferson, NH)) on three separate occasions, specifically on January 4, 2006, April 13, 2007, and June 19, 2008.

¹³ See *Hardwick Jul. 2011 Letter*, Ref. 1800B3 RG; *Jefferson Jul. 2011 Letter*, Ref. 1800B3 RG.

would be dismissed.¹⁴

Nassau did not respond within the 30-day deadline.¹⁵ Accordingly, the Division dismissed applications BNPH-20050103AIE (permit FM216-A (Jefferson, NH)) and BNPH-20050103AIJ (permit FM325-A (Hardwick, VT)) for failure to prosecute,¹⁶ and Nassau became subject to the default provisions of section 1.2104(g)(2) of the Commission's rules.¹⁷

Under the Commission's rules, at the close of the auction a winning bidder assumes a binding obligation to pay the full amount of its accepted winning bid.¹⁸ A bidder who defaults on that obligation or is disqualified is considered to be a defaulting bidder under the Commission's rules and is subject to a default payment.¹⁹ The default payment has two components: a deficiency payment and an additional payment amount.²⁰ The deficiency payment component applies only in the event that the subsequent winning bid the next time a construction permit for the allotment is won is less than the defaulted bid. The deficiency payment amount is the difference between the bidder's net defaulted bid and the subsequent net winning bid, or the difference between the bidder's gross defaulted bid and the subsequent gross winning bid, whichever is less.²¹ The additional payment amount is owed by each defaulting bidder.²² Pursuant to the rule in effect at the time of Auction 37, the additional payment amount is equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.²³

Until a construction permit for the relevant allotment is won in a subsequent auction, the Commission cannot determine the full amount of the default payment that is owed. Pursuant to its rules, the Commission therefore assesses an interim default payment amounting to three percent (3%) of the net winning bid.²⁴ Once a subsequent winning bid for the relevant allotment is established, the remaining

¹⁴ See Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau, to Nassau Broadcasting Holdings Inc., Ref. 1800B3 RG (May 6, 2011) (concerning application BNPH-20050103AIE (permit FM216-A (Jefferson, NH))); Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau, to Nassau Broadcasting Holdings Inc., Ref. 1800B3 RG (May 6, 2011) (regarding application BNPH-20050103AIJ (permit FM325-A (Hardwick, VT))).

¹⁵ See *Hardwick Jul. 2011 Letter*, Ref. 1800B3 RG; *Jefferson Jul. 2011 Letter*, Ref. 1800B3 RG.

¹⁶ See *id.*; Broadcast Actions, Report No. 47531, *Public Notice* (rel. Jul. 19, 2011); see also 47 C.F.R. § 73.3568(a) (providing that a failure to prosecute an application, to respond to official correspondence, or to respond to a request for additional information, will be cause for dismissal of the application and will subject the applicant to section 1.2104(g) of the Commission's rules).

¹⁷ See 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c), 73.3568(a); *Hardwick Jul. 2011 Letter*, Ref. 1800B3 RG; *Jefferson Jul. 2011 Letter*, Ref. 1800B3 RG; see also *Auction 37 Procedures Public Notice*, 19 FCC Rcd at 10605-06.

¹⁸ 47 C.F.R. § 1.2104(g)(2).

¹⁹ 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

²⁰ 47 C.F.R. § 1.2104(g)(2).

²¹ 47 C.F.R. § 1.2104(g)(2)(i).

²² 47 C.F.R. § 1.2104(g)(2).

²³ See *id.*; see also *Auction 37 Procedures Public Notice*, 19 FCC Rcd at 10605-06.

²⁴ See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 434 ¶ 102 (1997); Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 n.51 (1994); 47 C.F.R. § 1.2104(g)(2); see also Implementation of Section

amount owed by the defaulting party, if any, is then assessed.

Accordingly, Nassau is considered to be in default on the Permits for which it was the winning bidder in Auction 37, and is subject to the applicable default payment.²⁵ Pursuant to section 1.2104(g)(2) of the Commission's rules and the procedures established for Auction 37, Nassau owes an interim default payment of \$49,230.00 which is three percent (3%) of its total net winning bid of \$1,641,000.00.²⁶ Pursuant to section 1.2106(e) of the rules, we will apply Nassau's \$328,200.00 payment on deposit toward satisfying this interim default payment obligation.²⁷ Once a subsequent winning bid is established for the relevant allotment, we will determine Nassau's final default payment obligation. If an additional payment is required, a further order will assess such payment.²⁸

Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and section 1.2104(g)(2) of the Commission's rules, 47 C.F.R. § 1.2104(g)(2), Nassau Broadcasting Holdings, Inc. is ASSESSED an interim default payment of \$49,230.00.

IT IS FURTHER ORDERED that, pursuant to sections 1.2104 and 1.2106 of the Commission's rules, 47 C.F.R. §§ 1.2104 and 1.2106, Nassau Broadcasting Holdings, Inc.'s funds on deposit with the Commission will be applied toward satisfying the interim default payment obligation.

IT IS FURTHER ORDERED that, pursuant to section 1.2104(g)(2) of the Commission's rules, 47 C.F.R. § 1.2104(g)(2), Nassau Broadcasting Holdings, Inc. will be subject to a final default payment for its defaulted winning bid during Auction 37 for construction permits FM216-A (Jefferson, NH) and FM325-A (Hardwick, VT) once the spectrum associated with the construction permits is won in a subsequent auction and the full default payment amount is determined.

309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2382-83 ¶ 197 (1994).

²⁵ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

²⁶ *Id.*

²⁷ 47 C.F.R. § 1.2106(e).

²⁸ See Mountain Solutions Ltd., Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 21983, 21997 ¶ 25 (1998).

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IT IS FURTHER ORDERED that this Order shall be sent to Nassau Broadcasting Holdings, Inc. by certified mail, return receipt requested. This action is taken pursuant to authority delegated by section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

cc: Stephen Diaz Gavin
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